

**FEDERAL PROVISIONS
FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS
PROFESSIONAL SERVICES CONTRACTS**

NOTIFICATION OF FEDERAL PARTICIPATION

To the extent required by law, in the announcement of any third party contract award for goods or services having an aggregate value of \$500,000 or more, the Recipient agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of that Federal assistance as a percentage of the total cost of that third party contract. This project is expected to have the following funding, federal 80% and local 20%.

ENERGY CONSERVATION

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

CLEAN WATER

The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* . The Consultant agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

CLEAN AIR

The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* . The Consultant agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

FEDERAL CHANGES

Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between City and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of this contract.

ACCESS TO RECORDS

The Consultant agrees to provide the City, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Consultant access to Consultant's records and construction sites pertaining to a major capital

project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

DISADVANTAGED BUSINESS ENTERPRISE

Section I. DEFINITIONS

Disadvantaged Business Enterprise (DBE) means a small business concern that has successfully completed a DBE certification process and been granted DBE status by a recognized agency who certifies Disadvantaged Business Enterprise applicants based on the criteria contained in 49 CFR Part 26.

Small Business Concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. A small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals, which has annual average gross receipts in excess of the cap established by federal regulation. The Secretary shall adjust this figure from time to time for inflation and the cap in effect at the time a firm applies for certification under the federal DBE program will apply.

Socially and Economically Disadvantaged Individuals means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans. Membership in one of the above mentioned groups does not qualify the firm to be considered a DBE for purposes of this contract. Only firms that have completed a DBE certification process and been granted DBE status shall be considered eligible to meet DBE program requirements.

DBE Joint Venture: A DBE Joint Venture is an association of two or more persons, partnerships, corporations, or any combination thereof with more than 51 percent of the assets or interest in the business or property owned by one or more socially and economically disadvantaged individuals, formed to carry on a single business activity which is limited in scope and duration, and where resources, assets and labor are combined in an effort to accrue profit.

Sole Proprietorship: A sole proprietorship is a DBE if it is 100 percent owned, operated, and controlled by a socially and economically disadvantaged individual and the firm has been granted DBE status through a recognized DBE certification process.

Corporation: A corporation is a DBE if the ownership, operation, and control of the business is conditioned upon the control of its shares of stock or other equitable securities, at least 51 percent of which (of all shares) is legally and equitably owned by socially and economically disadvantaged individuals, and the firm has been granted DBE status through a recognized certification process.

Partnership: A partnership is a DBE if more than 51 percent of the assets or interests in the partnership's property is owned by one or more socially and economically disadvantaged individuals, and the firm has been granted DBE status through a recognized certification process.

Purchaser: Purchaser means the City of Tempe.

Proposer/Bidder: The Proposer/Bidder is an individual, partnership, joint venture, corporation or firm submitting a proposal and/or bid directly to the City, or through an authorized representative, to perform the services required by the contract.

Contract: A contract is a written agreement obligating the seller or business enterprise to furnish goods or services as proposed and the Purchaser shall pay for such goods or services.

Subcontract: A subcontract is any contract at any tier below the prime contract, including purchase orders.

Supplier: A supplier is a business enterprise that manufactures the goods or materials it sells.

Wholesaler, Distributor, Broker, or Jobber: A wholesaler, distributor, broker, or jobber is a business enterprise which does not manufacture the goods or materials it sells or does not perform the essential work of the contract. ***Examples:*** 1. A trucking company who does not own or operate the trucks necessary to perform the work, but brokers the work to another trucking firm. 2. A distributor who supplies goods or materials as a pass-through from the manufacturer without substantial alteration of the goods or materials. 3. A sub-tier bidder who purchases and supplies the goods and materials on behalf of the prime bidder and delivers the goods and materials to the prime bidder without substantial alteration of the goods and materials.

Section II. DBE UTILIZATION

A. Obligation:

All Proposers/Bidders are required to meet the DBE program bid requirements detailed in this Clause, at the time their bid is submitted. The successful Proposer/Bidder, by the submittal of a bid/proposal or subsequent acceptance of a contract, agrees to provide opportunities for the fair and full utilization of DBEs by complying with the post-award requirements of this Clause. Nothing in this Clause shall be construed to require the utilization of Disadvantaged Business Enterprises that are not qualified or not available. Failure to comply with the requirements of the Contract, including the achievement of the required utilization of DBE firms, the substantiation of the good faith effort to ensure DBE firms have the maximum opportunity to participate on the Contract, and/or to utilize DBE in accordance with the proposed utilization submitted at the time of bid constitutes a breach of contract. Such breach may lead to the termination or cancellation of the Contract. Included in these requirements is the work under this Contract, and /or substantiation that a good faith effort to ensure that Disadvantaged Business Enterprises had the maximum opportunity to participate in the performance of work under this Contract.

B. Established DBE Requirement:

For this project, the City of Phoenix has established the following goal for the utilization of DBEs.

Disadvantaged Business Enterprises (DBEs) shall participate in not less than thirteen point six percent (13.6%) of the contract dollar amount. In determining whether or not a Bidder has met this requirement, rounding up of subcontract bid amounts shall not be allowed.

Section III. DEGREES OF DBE PERCENTAGE ATTAINMENT

A. Prime Contractor Subcontracts to DBE:

The DBE amount to be applied to fulfill the DBE requirement will be based on that portion (dollar value) of the contract that DBEs perform. For example, if a prime contractor subcontracts work amounting to \$100,000 of a contract, for which the total project cost is \$500,000, the DBE participation will be credited at 20 percent. Any portion of the subcontract with the DBE that is subsequently subcontracted to a non-DBE firm will not be counted towards fulfilling the DBE requirement.

B. Prime DBE:

A DBE prime contractor will be credited with DBE participation for that portion of the contract which they themselves perform, plus that portion subcontracted to disadvantaged firms. *For example, if a DBE prime contractor proposes to perform 50 percent of the project quoted at \$500,000 and subcontracts 25 percent to a DBE firm and 25 percent to a non-DBE firm, DBE participation will be credited as being 75 percent, or \$375,000.*

C. DBE - Non-DBE Joint Ventures:

A joint venture consisting of DBE and non-DBE Business Enterprises, functioning as a prime contractor, will be credited with DBE participation on the basis of the percentage of profit accruing to the DBE firm. *For example, if a DBE and non-DBE joint venture proposes to perform 50 percent of a project quoted at \$400,000 and 50 percent of the profits are to accrue to the DBE partner in the joint venture, DBE participation will be credited at 25 percent, or \$100,000.*

D. Lower Tier Non-DBE Participation:

DBE and qualifying joint ventures proposing to subcontract with non-DBE subcontractors shall not have that portion of subcontracting activity considered when determining the percentage of DBE participation.

E. DBE Suppliers:

Any DBE supplier that manufactures or substantially alters the material or product it supplies will have that portion of activity considered at 100% when determining the percentage of DBE participation. Any Wholesaler, Distributor, Broker, or Jobber that does not manufacture or substantially alter the materials or product it sells will be limited to sixty percent (60%) of the sale price when determining the percentage of DBE participation.

Section IV. DETERMINATION OF RESPONSIVENESS TO DBE REQUIREMENTS

- A. **Bidders Declaring They Will Meet the DBE Goal Requirements of the Contract** - The successful bidder, and/or and bidders who wish to remain in competition for contract award, shall provide as part of the bid submittal packet, the DBE validating information. **The submittal of the required documentation is a matter of responsiveness to the requirements of the contract and shall be part of the submittal at the time of bid.** Failure to submit the DBE program documents cited below will result in a determination by the City that the bidder(s) is non-responsive to the DBE requirements of the contract. The

information should be submitted in a separate sealed envelope with the Bid Proposal. At a minimum, the following is required at the time of the bid:

1. **Attachment A** – “Letter of Intent to Perform As A Subcontractor/Supplier”. The dollar value and the scope of work that the DBE subcontractor is bidding to perform must be completed on the form. This amount should not be altered on the prime contractor’s bid submittal when identifying the dollar amount and scope of work that will be performed by the DBE. Any negotiations with the DBE as to a reduced or increased scope of work or a reduced subcontract bid amount that the prime contractor proposes to award to the DBE must be completed prior to bid and the Letter on Intent to Perform As A Subcontractor/Supplier shall reflect the agreed upon scope and dollar value of the subcontract that will be entered into in the event that the bidder receives award of the contract.
2. **Attachment B** – “Proposed DBE Bid Participation”. The DBE participation proposed by the bidder at the time of bid must reflect the scope of work and dollar value for such work that was submitted by the DBE contractor. The dollar amount must be substantiated by the amount reflected on Attachment A cited above. Any changes to the proposed dollar amount or scope of work must be in accordance with the provisions of Section V of this document. The scope of work to be performed by the DBE shall be consistent with the area in which the firm has been DBE certified. Scopes of work proposed for DBE subcontracting that fall outside the trade or performance areas in which the DBE firm has been granted certification shall not be counted in determining if the bidder has met the DBE goal requirements of this document.
3. **Attachment C** (where applicable) “Identification Statement for Disadvantaged Business Enterprises”. **Please Note:** If a bidder lists a certified DBE firm on Attachment B that is not certified by the City of Phoenix at the time of bid, a completed Attachment C shall be required at time of bid. The form must be signed by a duly authorized representative of the DBE firm and must contain the name of the agency that has granted the firm DBE status. All firms must have a valid and current DBE certification, awarded by a USDOT recognized certification entity at the time of bid. DBE subcontractors/suppliers not certified by the City of Phoenix shall be required to show proof of their DBE certification prior to determination of the responsiveness of the bidder to meet the requirements of this section. Such proof shall be in the form of documents supplied from the recognized certifying agency.
4. **Bid Proposal Statement** - Complete the following written statement that appears on the bid proposal:

“This will certify that, of the total amount of the bid, \$ _____ will be accomplished by duly certified Disadvantaged Business Enterprises, which amount is _____ percent of the total amount of the bid submitted.

- B. **Bidders Petitioning For Relief From DBE Goal Requirements** – Bidders failing to identify DBE participation equal to, or greater than, the DBE requirement in Section II (B) of this document, must, as a matter of responsiveness, petition for grant of relief from the goal requirement. Such petition must state the specific portion of the goal for which relief is requested and the petition and all supporting documentation **must be submitted at the time of the bid**. The request for relief of a portion of the goal does not relieve the Bidder from the requirement to submit the documentation listed in Part A of this section for that portion of the goal that will be met. DBE participation information required under Parts A and/or B of this section that are submitted after the bid deadline shall not be considered. The petition for relief shall be submitted in a separate sealed envelope and shall include all reasonable good faith efforts made by the Bidder towards fulfilling the DBE requirement. The petition and description of good faith efforts must be executed in affidavit format. Mere Pro-Forma efforts will not be regarded as satisfying the requirements of good faith.

Failure of a Bidder to provide sufficient evidence to show the good faith efforts made to obtain DBE participation shall result in the City determining that the Bidder was non-responsive to the DBE requirements of the contract. The following factors are illustrative of those matters that the Equal Opportunity Department shall consider in judging whether the Bidder made good faith efforts. The good faith actions of the Bidder must be substantiated in the original submittal by written documentation and proof.

1. Whether the Bidder/Proposer attended any pre-bid or pre-solicitation meetings that were scheduled by the Purchaser to inform them of DBE subcontracting opportunities. (The City will verify attendance through the “Sign-In Log” maintained for each pre-bid and pre-solicitation meeting.)
2. Whether the Bidder/Proposer advertised in general-circulation trade association and DBE-focus media concerning the subcontracting opportunities, allowing a reasonable period of time for DBEs to participate in subcontracting negotiations (Bidders should allow 20 calendar days where applicable. The Bidder should provide copies of all advertisements, depicting the publication date of the notice.)
3. Whether the Bidder/Proposer provided written notice to a reasonable number of specific DBEs that their interest in the contract is being solicited, in sufficient time to allow the DBEs to participate effectively;
4. Whether the Bidder/Proposer followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
5. Whether the Bidder/Proposer selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
6. Whether the Bidder/Proposer provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;

7. Whether the Bidder/Proposer negotiated in good faith with interested DBEs not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;
 8. Whether the Bidder/Proposer made efforts to assist interested DBEs in obtaining bonding lines of credit, or insurance required by the purchaser or contractor; and,
 9. Whether the Bidder/Proposer effectively used the services of available DBE community organizations; DBE contractors groups, local, state and Federal DBE assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.
- C. Where direct negotiation with DBEs for sub-bids was made, the actions taken must be reported, upon request, in such a fashion as to include all of the following terms.
1. A detailed statement of the efforts made to negotiate with DBEs, including at a minimum the names, addresses and telephone numbers of DBEs contracted.
 2. A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed
 3. A detailed statement of the reasons why additional prospective agreements with DBEs, if needed to meet the stated goal, were not achieved;
 4. A detailed statement of the efforts made to select portions of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated goal; and
 5. For each DBE contacted, considered by the Bidder/Proposer to be unavailable, the Bidder/Proposer must submit an Unavailability Certificate signed by the DBE. If the DBE refused to give such a certification, the Bidder/Proposer must submit a statement to that effect along with a detailed statement of the reasons for his conclusion of unavailability.
- D. If the Bidder/Proposer is a distributor or a manufacturer where it can be shown that the opportunity for DBE utilization does not exist, good faith efforts must include research into the DBE potential in the roles of sub-supplier, transporter, engineering, distribution, or any other roles contributing to the performance of the contract. Information must be submitted, in affidavit form, stating the reasons why, based on research, DBE participation will not be practical to the extent of the contract's DBE goal.
- E. A representative of the Equal Opportunity Department may, upon written notice to the Bidder/Proposer, meet with the Bidder/Proposer to discuss their evidence of good faith efforts to contact and negotiate with DBEs, and/or their inability to achieve the established DBE requirement.

- F. In the event that the Equal Opportunity Department determines that the Bidder/Proposer has not made sufficient efforts to meet the established requirement, the Purchaser shall consider the bid as non-responsive and proceed with the evaluation of the next apparent low bidder/proposer. This process will continue until a selection is made.
- G. If all Bidders/Proposers are judged to be ineligible, bids will be solicited again.
- H. If the Equal Opportunity Department determines that a Bidder's submittal documenting good faith efforts in support of a request for relief from all or a portion of the DBE requirement of this contract is non-responsive, the Bidder may request reconsideration of the determination. Such request must be in writing and must be received by the City Clerk within three days of notification of the determination.
The reconsideration process will consider that evidence and documentation submitted at the time of bid. The reconsideration official may request clarifying information in support of that information submitted at the time of bid.

Section V. REQUIREMENTS AND PROCEDURES SUBSEQUENT TO CONTRACT AWARD

- A. Upon approval of the required DBE utilization documentation, the successful Bidder/Proposer shall enter into a subcontract with each approved subcontractor as submitted at the time of bid. The Bidder shall not substitute or replace a DBE listed on bid documents without the written approval of the City of Phoenix Equal Opportunity Department. DBE subcontracts shall not be terminated nor shall the scope of work to be performed by the DBE be reduced, nor shall the price to be paid to the DBE be decreased without the prior approval of the City of Phoenix Equal Opportunity Department.
- B. DBE Substitutions - Failure to comply with the terms of the contract or to use DBEs as stated in the Contractor's assurances constitutes breach of contract, and may lead to the cancellation or termination of the Contract. The Contractor must notify the City of Phoenix Equal Opportunity Department in writing of the necessity to substitute a new DBE in order to fulfill the DBE requirements prior to a substitution being made. The letter requesting approval of a substitution must give specific reasons for justifying release by the City of prior DBE commitments specified in the Contractor's bid/proposal.

Actual substitution or replacement of DBEs to fulfill DBE contract requirements shall not be made before the Equal Opportunity Department's approval is given as to the acceptability of the substitute DBE. Substitute DBE firms may not perform work on the contract and such work may not be counted towards a contract goal, prior to Equal Opportunity Department approval. Failure of the contractor to submit the required documentation to substantiate contractual arrangements made with substitute DBE firms must be submitted within seven days from the time that the Equal Opportunity Department issues written approval of the substitution. Failure to submit the required documentation shall constitute a breach of contract and may result in the termination or cancellation of the contract.

After award of the Contract, no relief of the DBE requirements will be granted except in exceptional circumstances. Requests for complete or partial waiver of the DBE requirements of this Contract must be submitted in writing to the City of Phoenix Equal Opportunity Department stating all details of the request, the circumstances, and any additional relevant information. The request must be accompanied by a record of all efforts

taken by the Contractor to locate specific DBEs, solicit DBE bids, and seek assistance from the Equal Opportunity Department, Community and Business Relations Division (602) 262-6790.

In cases, where an enterprise previously considered to be DBE is found not to be bona fide, the City of Phoenix Equal Opportunity Department will consider the following special criteria in evaluating a waiver request:

1. Whether the prime contractor was reasonable in believing the enterprise to be a bona fide DBE; and
2. Whether efforts were taken to substitute the DBE involved.

Section VI. REPORTING REQUIREMENTS AND POST-AWARD COMPLIANCE

- A. Any contractor found to have knowingly engaged in or participated in any attempt, direct or indirect, to evade the requirements of this DBE Contract clause may be declared ineligible for any future contracts paid for, in whole or in part, by Federal funds or supported with other Federal financial assistance. Furthermore, the Contractor may be held liable to the City of Phoenix for any forfeiture of funds or damages caused by delay in the award or performance of the contract resulting from the Contractor's non-compliance.
- B. During the performance of the work under this Contract, the Contractor shall keep such records as are necessary to determine compliance with its disadvantaged business enterprise utilization obligations. Records to be kept by the Contractor will indicate the actual DBE and non-DBE contractors, the type of work being performed, and actual dollar value of work, services and procurement. (**See Attachment D**). Notice shall be made in writing to the Equal Opportunity Department at any time during the contract period that the Bidder/Proposer anticipates the established DBE requirements on the contract will not be achieved. In the event the Bidder/Proposer does not achieve the established requirement, the records shall also include the following: (1) the progress and efforts being made in seeking out disadvantaged contractors for work on this project; and (2) documentation of all correspondence, contacts, telephone calls, etc., to obtain the services of disadvantaged business enterprises on this project.
- C. During the contract period the Contractor shall submit reports (Attachment D) on contracts and other business transactions executed with DBEs with respect to the records referred to above. The reports shall be in such a form, manner, and content as prescribed by the City of Phoenix. These reports (Attachment D) shall be submitted with each request for payment but not later than the first week of each month to the Equal Opportunity Department.
- D. All retentions, progress payments and other payments shall be retained or made as required by Arizona Revised Statutes (A.R.S.) § 34-221 and § 34-607, which, in part, require the Contractor to make payment for satisfactory completion of the subcontractors' work within seven (7) days of the receipt of each progress payment.

Section VII. REQUIRED ASSURANCES

The City has agreed to abide by the assurance found in 49 CFR Part 26.13(a) and required by the U. S. Department of Transportation. As a condition of this agreement, the City shall require each contract signed by the City with contractors, and each subcontract signed by the contractor with a subcontractor, to include the following assurance:

“The contractor, subcontractor, or sub-recipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or such other remedy as the City deems appropriate.”

NO OBLIGATION BY THE FEDERAL GOVERNMENT

The City and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subconsultant who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.

The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Consultant, to the extent the Federal Government deems appropriate.

The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subconsultant who will be subject to the provisions.

TERMINATION FOR CONVENIENCE OR DEFAULT

The City may terminate this contract in whole or in part, for the City's convenience or because of the failure of the Consultant to fulfill the contract obligations. The City shall terminate by delivering to the Consultant a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Consultant shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the City, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Consultant to fulfill the contract obligations, the City may complete the work by contract or otherwise and the Consultant shall be liable for any additional cost incurred by the City.

If, after termination for failure to fulfill contract obligations, it is determined that the Consultant was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

CIVIL RIGHTS

Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

The Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

DISPUTE RESOLUTION

In the event of a dispute between the parties to this Contract regarding a provision of this Contract, a party's performance of its obligations as stated in this Contract or any other matter governed by the terms of this Contract, the parties will meet in good faith to attempt to resolve the dispute. If the parties fail to resolve the dispute, then the parties agree that the dispute may be resolved through mediation. If mediation is agreed to by the disputing parties, the disputing parties shall mutually agree upon the services of one (1) mediator whose fees and expenses shall be borne equally by the disputing parties. If the dispute is not resolved within a reasonable time, the disputing parties shall be free to use other remedies available to them to resolve the dispute.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in [FTA Circular 4220.1E](#) are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause City to be in violation of the FTA terms and conditions.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

Lower Tier-covered Transactions (Third Party Contracts over \$100,000).

The CONSULTANT shall be required to submit a certified copy of **ATTACHMENT F** with this proposal.

- a) By signing and submitting this proposal, the prospective lower tier participant is providing the signed certification set out below.
- b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other

remedies available to the Federal Government, City may pursue available remedies, including suspension and/or debarment.

- c) The prospective lower tier participant shall provide immediate written notice to City if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- d) The terms covered “transaction”, “debarred”, “suspended”, “ineligible”, “lower tier-covered transaction”, “participant”, “persons”, “principal”, “proposal”, and “voluntarily excluded”, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact City for assistance in obtaining a copy of those regulations.
- e) The prospective lower tier participant agrees by submitting this proposal that, should the proposed tier-covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by City.
- f) The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
- h) Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i) Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, City may pursue available remedies including suspension and/or debarment. Neither Consultant nor any officer or controlling interest holder of the CONSULTANT, is currently, or has been previously, on a debarred proposer list maintained by the United States Government. The Consultant **shall** be required to submit a certified copy of **ATTACHMENT F** with this agreement.

CERTIFICATION OF RESTRICTION ON LOBBYING

For all purchases exceeding \$100,000 the Proposer is required to complete **ATTACHMENT G** certifying compliance with P.L. 101-121, Section 319, that no Federal Funds have been used to support lobbying activities to exert influence regarding the award of a Federal contract and that such requirements have been imposed upon Consultants and subconsultants.

If non-Federal Funds have been used to support lobbying activities, a disclosure form, Standard Form-LLL “Disclosure Form to Report Lobbying” must be submitted in accordance with P.L. 101-121, Section 319.